



July 20, 2022

Honorable Erica A. Barker
Secretary and Chief Administrative Officer
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Barker:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is hereby filing a copy of a bilateral Data Sharing Agreement (DSA) into which it has entered with a designated postal operator of Kyrgyzstan. See Attachment 2 (redacted). The Postal Service has marked the non-public version of this DSA as "Confidential" and "Non-Public," and is filing it under seal, because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the new DSA to be protected by Exemption 3 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(3), coupled with 39 U.S.C. § 410(c)(2), and thereby not subject to mandatory disclosure under the FOIA. Further, the DSA contains the confidential commercial information of the affected postal operator, and, as such, certain portions of the instrument are also subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an Application for non-public treatment of this document under 39 C.F.R. § 3011.201. See Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the document becomes subject to any FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

/s/

Jeffrey A. Rackow

Attorney

Attachments

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT

In accordance with 39 C.F.R. Part 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted version of the Data Sharing Agreement (“DSA”) between the Postal Service and the foreign designated postal operator. The Postal Service is transmitting the DSA to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The redacted version of the DSA is attached to this Application as Attachment 2. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3011.201 for this Application.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials;

The material designated as non-public consists of information of a commercial nature that would not be publicly disclosed under good business practices as well as information that may impact law enforcement interests. In the Postal Service’s view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ Because the portions of the material that the Postal Service seeks to file under seal fall within the scope of information not

¹ In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3, June 27, 2018, at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11. *Cf. Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624 (U.S. June 24, 2019).

required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and to grant its Application for its non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of [§ 3011.201] (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual;

The submitter, the Postal Service, has a proprietary interest in the information contained in the non-public version of the DSA. In the case of agreements, such as the one being transmitted here, the Postal Service believes that the foreign postal operators that are counterparties to such agreements are the only third parties that also have proprietary interests in that information. For both itself and the third-party operator, the Postal Service identifies as an appropriate contact person Mr. Jerome K. Giles, International Postal Affairs, United States Postal Service.² Mr. Giles's phone number is +1 (202) 215-7923, and his email address is jerome.k.giles@usps.gov. The Postal Service has already informed the participating postal operator, consistent with 39 C.F.R. § 3011.200(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials is non-public;

² 39 C.F.R. § 3011.201(b)(2)(ii) provides that, where a third party's identification is "sensitive or impracticable," another individual may be designated to provide notice to the third party as applicable. Under the present circumstances in which the third party is a foreign postal operator that is based abroad to conduct its business, it is impracticable to identify an individual who can receive and accept future notices of U.S. motions, subpoenas, or orders related to these materials on behalf of the foreign operator. Accordingly, the Postal Service identifies the individual above to provide such notices as applicable.

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting the DSA with a foreign postal operator that is an agency of a foreign government. The DSA includes information concerning the transmission of electronic data between the Postal Service and the foreign postal operator. Such electronic data are used by law enforcement entities to ensure compliance with various U.S. laws and regulations, including those related to imports, exports, security, and mailability. The Postal Service may also use the electronic data for certain operational and customer services purposes. Likewise, the foreign operator and its country's law enforcement agencies may also use the data for certain law enforcement, operational, and customer service purposes. The redactions applied to the DSA protect the specifics of the negotiated uses and protections of the customs data electronically transferred between the Postal Service and its counterparty.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm alleged to result from disclosure;

If the portions of the DSA that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. The negotiated details of electronic data transfers are commercially sensitive, and would not be disclosed under good business practices. If this information were made public, competitors of the Postal Service and its counterparty, including private entities and other postal operators not parties to the DSA, could use the information to identify strengths and vulnerabilities in operations and customer service. Postal operators not currently a party to any DSA also might use the information to their advantage in negotiating future DSAs with the Postal Service. Similarly, the foreign postal operator

that is the counterparty to the agreement could also face the same kind of commercial harm from disclosure to its competitors.

Additionally, if the redacted information were to be disclosed publicly, it would assist entities seeking to circumvent law enforcement efforts to ensure compliance with various U.S., foreign, and international laws and regulations, including those governing imports, exports, security, and mailability.

The Postal Service considers the use of the redacted information to gain commercial advantage and to circumvent law enforcement to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the redacted terms of the DSA would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That other postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own DSA with the Postal Service.

Harm: Public disclosure of redacted information in the DSA would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains an unredacted version of the DSA from the Postal Regulatory Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the Postal Service's operational and customer service abilities. The competing delivery service then targets the area of weaknesses to gain leverage in the marketplace, thereby significantly cutting into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the DSA would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains copies of the unredacted version of the DSA from the Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the foreign postal operator's operational and customer service abilities. The competitor then targets the areas of weakness to gain leverage in the marketplace, thereby significantly cutting into the revenue streams of the foreign postal operator.

Harm: Public disclosure of information in the DSA would be used to circumvent U.S., foreign, and international laws and regulations.

Hypothetical: Entities or individuals seeking to circumvent U.S. laws and regulations or those of the Postal Service's counterparty obtain unredacted copies of the DSA from the Commission's website. Those entities or individuals then use the information regarding electronic data transfer to circumvent efforts by domestic or foreign law enforcement agencies to enforce laws and regulations governing, *inter alia*, imports, exports, security, and mailability.

(6) The extent of protection from public disclosure alleged to be necessary;

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service (including other postal operators) should not be provided access to the non-public material.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. § 3011.401(a). However, because the Postal Service's relationships with postal operators often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b)-(c).

(8) Any other relevant factors or reasons to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its Application for non-public treatment of the identified material.

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA (2022 v.1)

WHEREAS, the undersigned postal operators (the "Parties") provide international postal services;

WHEREAS, the Parties understand the need to facilitate the exchange of customs electronic data for international postal items in advance of loading such items onto the transporting conveyance for dispatch from the originating countries; and

WHEREAS, the Parties also recognize the importance of data and privacy protection in view of the long-lasting reputation of postal operators as guardians of the integrity of the mail.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions

- *Agreement*: means this "Agreement for the Electronic Exchange of Customs Data (2022 v.1)."
- *Authority or Authorities*: means all officially authorized agencies associated with the inspection or control of postal items at a country's borders, in accordance with the national laws of each country.
- *Customs Data*: means the electronic information required to be exchanged between the Parties in accordance with UPU messaging standards M33 and M41, as each standard is updated from time to time; these Customs Data include, but are not limited to, Personal Data.
- *Electronic Data Interchange* ("EDI"): means exchange of data by means of networks and formatted messages.
- *Personal Data*: means information that can be used to identify a natural person, either alone or when combined with other identifying information.
- *Receiving Party*: means the Party that has received Customs Data through EDI messages from the other Party.
- *Sending Party*: means the Party that transmits Customs Data through EDI messages to the other Party.
- *Transporting Conveyance*: means the aircraft, vessel, vehicle (including, but not limited to, truck or railroad car), or other contrivance used to carry mail that is dispatched from one international office of exchange and destined to another international office of exchange.
- *UPU*: means the Universal Postal Union, the specialized agency of the United Nations.

2. Subject and Purpose

This Agreement shall set the conditions under which the Parties electronically exchange Customs Data relating to postal items.

3. Data Capture

Customs Data relating to the items defined in Article 4 shall be captured and transmitted by each Party to the other Party in conformity with the latest versions of UPU standards M33 and M41, as each standard is updated from time to time, for the electronic communication of item information or any other compatible standards as may be mutually agreed upon by the Parties in writing. The designated operator of origin shall ensure that each dispatched item's unique S10 barcoded identifier has been electronically linked (nested) to the S9 barcoded label of the receptacle containing that item, and that this information is included in the M41 PREDES electronic dispatch messaging sent to the designated operator of destination.

All mandatory data fields shall be fully and accurately completed prior to transmission. Any other data elements that are conditionally required by law shall also be furnished if the corresponding conditions are present. Customs Data transmitted shall include, but shall not necessarily be limited to, the following elements for each item:

- (i) Sender's name and address;
- (ii) Recipient's name and address;
- (iii) Detailed description of contents;
- (iv) Quantity;
- (v) Weight;
- (vi) Item ID (including S10 barcode identifier);

- (vii) Declared value;
- (viii) Identity of originating designated operator.

In addition, Customs Data transmitted shall also include, but shall not necessarily be limited to, the following elements for each dispatch:

- (ix) Dispatch information including origin post, destination post, and dispatch number;
- (x) Scheduled date and time of departure of the transporting conveyance;
- (xi) Scheduled date and time of arrival in the destination country;
- (xii) Transportation information including carrier and, as applicable, flight number, voyage number, trip number, and/or transportation reference number;
- (xiii) Scheduled destination office of exchange;
- (xiv) Total weight of the dispatch; and
- (xv) The information for receptacles contained within the dispatch, including receptacle type, receptacle ID (including S9 barcode identifier), and weight, as well as item ID for items nested to the receptacles (including S10 barcode identifier), if applicable.

4. Items for which Customs Data are Captured and Exchanged

Subject to any applicable law, the Parties shall capture and electronically exchange Customs Data for all international postal items for which customs forms are required, including parcel post, EMS, and letter post items containing goods, whether tracked or untracked.

5. Timing of Customs Data Transmission

The Sending Party shall transmit all Customs Data, including ITMATT and PREDES messages, to the Receiving Party as soon as practicable; in any event, the Sending Party shall transmit ITMATT (in conformity with standard M33) to the Receiving Party at least 2 hours prior to the Sending Party loading the corresponding mail onto the transporting conveyance, and the Sending Party shall transmit PREDES (in conformity with standard M41) to the Receiving Party at least 30 minutes prior to the Sending Party loading the corresponding mail onto the transporting conveyance. The Sending Party shall also transmit any updated Customs Data prior to arrival of the shipment at the destination office of exchange. Notwithstanding the foregoing, the Parties shall also comply with any applicable laws governing the timely transmission of Customs Data.

6. Use of the Data Exchanged

6.1 The use of the Customs Data that are transmitted to a Receiving Party shall be limited to purposes of [REDACTED]

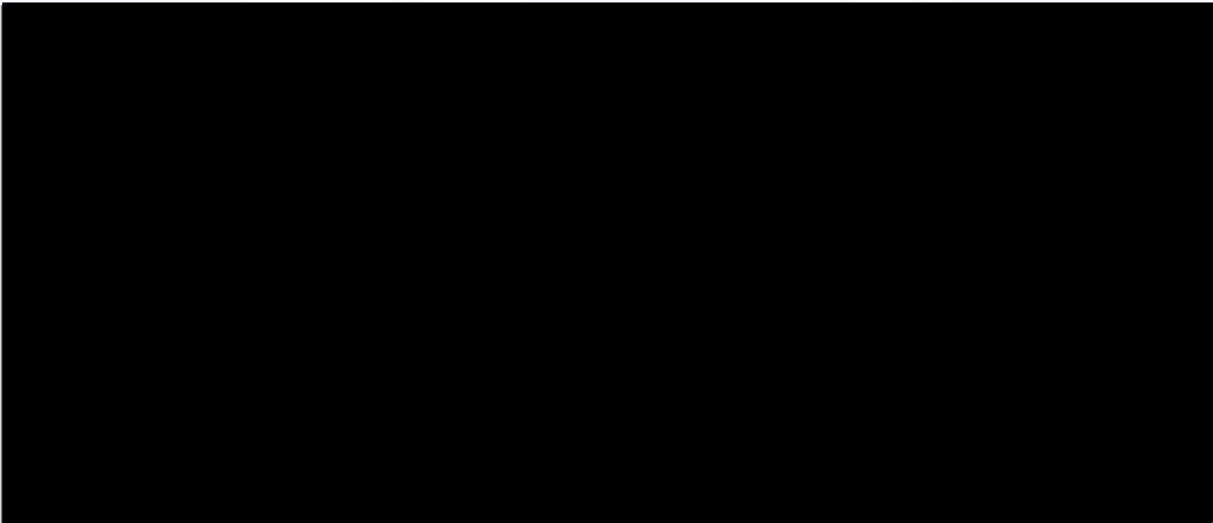
[REDACTED], or to any other purposes as required by the Receiving Party's national laws.

6.2 A Receiving Party shall inform the Authority to which it transmits a Sending Party's Customs Data about the terms of this Agreement and of any other relevant data sharing agreement between the Parties, [REDACTED]

6.3 The provisions of this Article shall not restrict a Receiving Party's lawful disclosure of Customs Data received from the Sending Party in the event of legal requirements based on each Receiving Party's national laws or based on an order, regulation, or rule of any court, tribunal, or oversight agency of competent jurisdiction.

7. Data Security and Storage

[REDACTED]



7.3 Each Party shall limit the retention of the Customs Data to a period authorized by its national laws. In the event that no national retention period has been designated, each Party shall cease to retain the Customs Data no more than [REDACTED] from the date of receipt of the Customs Data, unless retention for a longer period of time is authorized by national laws.

8. Confidentiality

8.1 The Parties consider certain information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. Except as required by law, the Parties shall treat as confidential and not disclose to third parties, absent express written consent by the other Party, any information related to this Agreement that is proprietary to another Party, including any information treated as non-public by the U.S. Postal Regulatory Commission ("Commission").

8.2 The Parties acknowledge that this Agreement and supporting documentation may be filed with or submitted to the Commission, the U.S. Department of State, U.S. Customs and Border Protection, the U.S. Food and Drug Administration, and/or other U.S. Government entities. As for disclosures to the Commission, the Parties authorize the United States Postal Service ("USPS") to determine the scope of information that must be made publicly available under the Commission's rules. The Parties further understand that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, www.prc.gov. The Parties have the right, in accordance with the Commission's rules, to address their confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, U.S. Code of Federal Regulations, Part 3011, as updated from time to time, including Sections 3011.201 and 3011.204, and may also be found through the Commission's website. At a Party's request, USPS shall notify that other Party of any filing with the Commission, the U.S. Department of State, U.S. Customs and Border Protection, the U.S. Food and Drug Administration, and/or any other U.S. Government entity.

9. Notice

Any information required or authorized to be given by a Party to the other Party, in accordance with the provisions of this Agreement, shall be in writing and delivered personally, or sent via e-mail, to the other Party's contact as specified below. Such a notice shall be deemed to have been received the same day it was delivered by hand or sent via e-mail. Either Party may change its address or contact name by giving notice to the other Party in the manner set forth in this Article.

Contacts for Notices	
For State Enterprise "Kyrgyz Pochtasy"	
For United States Postal Service	<div data-bbox="592 517 767 551"></div> <div data-bbox="592 551 959 584"></div> United States Postal Service Email: <div data-bbox="671 618 935 651"></div>

10. Third-party Claims

Through this Agreement, the Parties do not create or designate any third-party beneficiaries. In the event that a third party asserts a claim against a Party that is attributable to a breach of this Agreement by the other Party, the defending Party reserves all rights under applicable law to seek contribution from the other Party, regardless of whether or not the other Party is named as a defendant or third-party defendant in the same suit or proceeding.

11. Entry into Force and Duration of this Agreement

This Agreement shall enter into force upon signature of both Parties and shall continue indefinitely unless terminated by one of the Parties.

12. Termination and Withdrawal

Subject to the conditions laid out in this Article, a Party shall be entitled by notice in writing to the other Party to terminate this Agreement immediately without cause. The terms and conditions of portions of this Agreement that, by their context or nature, are intended to survive after performance hereunder shall survive the termination of this Agreement, including, but not necessarily limited to, the provisions concerning confidentiality and use, security, and storage of Customs Data (including Articles 6-9).

13. Commercial Nature of the Agreement and Governing Law

This Agreement constitutes a legally binding commercial and operational contract on the part of each signatory hereto and does not bind the Parties' respective governments. The Parties acknowledge that this Agreement sets out the terms and conditions of a negotiated contractual arrangement between the Parties and is not an agreement entered into under, or subject to, international law. This Agreement shall be governed by, and construed in accordance with, the federal law of the United States of America. This Agreement does not involve the creation of a subsidiary or branch of either Party or a joint venture company or partnership funded in any ratio by the Parties. The Parties do not intend that any agency, partnership, or employer-employee relationship be created between them by this Agreement.

14. Privileges and Immunities

Except as may be otherwise stated expressly in this Agreement, this Agreement shall not constitute, and shall not be construed as, a waiver of any of each Party's applicable privileges, immunities, or defenses, including but not limited to any governmental or sovereign privileges, immunities, or defenses from suit, jurisdiction, or liability. Nothing in this Agreement shall be construed as creating or imposing any individual liability on any of either Party's employees or other personnel.

15. U.S. Import Regulations

As a material condition of this Agreement, the Party dispatching mail to the United States agrees not to facilitate, either knowingly or with gross negligence, the importation of merchandise into the United States by any person ineligible to obtain an importer of record number under regulations of the United States Department of Homeland Security.

16. Language

This Agreement has been prepared in English. If the Agreement has been translated into another language, the English version shall prevail in case of any conflict and shall therefore be the binding version for all Parties. The Parties agree that the language of their correspondence and communication at the administrative level shall be in English unless otherwise agreed to by the Parties.

17. Amendments

Any amendment to this Agreement shall be made in writing and signed by, or on behalf of, each of the Parties in order to become effective.

18. Waiver

No delay or omission by a Party to exercise any right or power accruing upon any non-compliance or default by the other Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default. A waiver by a Party of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach. To constitute a valid waiver, the terms of the waiver must be exchanged between the Parties in writing.

19. Severability

If any provision of this Agreement is held to be invalid, unenforceable, or in conflict with any applicable law, treaty, or regulation related to this Agreement or its performance, that provision shall be deemed to no longer form part of this Agreement, and the remaining provisions shall remain in force.


20. Counterparts

This Agreement may be executed in counterparts. Each counterpart constitutes the agreement of the Party which has executed and delivered that counterpart to the other Party. Each executed counterpart is an original, but the executed counterparts together constitute one and the same Agreement.

21. Entire Agreement

This is the entire agreement between these undersigned Parties with respect to its subject matter. With respect to the relationship between these undersigned Parties concerning such subject matter, this Agreement supersedes and replaces any written or oral arrangements, correspondence, conversations, agreements, and documents made or exchanged between the Parties prior to its execution concerning such subject matter, including bilateral or multilateral agreements that either Party previously executed applicable to the electronic exchange of Customs Data to the extent that such agreements concern the relationship between these two Parties. Notwithstanding the foregoing, this Agreement shall not supersede or replace any agreements, including those referenced above, to the extent that such agreements apply to either Party's relationship with any third parties. The obligations arising from this Agreement are in addition to, and not in lieu of, obligations arising from applicable national laws or from the UPU Convention or UPU Convention Regulations.

Postal Operator Parties to the Agreement

STATE ENTERPRISE "KYRGYZ POCHTASY"	
Signature of Authorized Representative	
Name of Authorized Representative	Marat Cherikchiev
Title of Authorized Representative	General Director
Date of Signing	19 th of May, 2022y.
UNITED STATES POSTAL SERVICE	

Signature of Authorized Representative	<i>Robert H Raines Jr</i>
Name of Authorized Representative	Robert H. Raines Jr.
Title of Authorized Representative	Vice President, Business Solutions
Date of Signing	7/14/2022